

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**EDWARD L. RUDD,**

**Plaintiff,**

**v.**

**ACCREDITO HEALTH GROUP, INC.;**

**Defendant.**

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**No. 08-2654-STA**

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**ORDER DISMISSING CASE WITH PREJUDICE**

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On November 23, 2009, Defendant Accredo Health Group, Inc. filed a Motion to Dismiss or in the Alternative to Compel Plaintiff's Appearance at Deposition, and for Sanctions (D.E. # 26). To date, Plaintiff has not responded to Defendant's Motion. This Court referred Defendant's Motion to Dismiss to Magistrate Judge Charmiane G. Claxton for Report and Recommendation on November 24, 2009 (D.E. # 27). Based on Plaintiff's failure to respond to Defendant's Motion, on January 6, 2010, Magistrate Judge Claxton (D.E. # 28) entered an Order requiring Plaintiff to show cause why Defendant's Motion to Dismiss should not be granted. To date, Plaintiff has not responded to the Magistrate Judge's Order.

On January 27, 2010, Defendant filed a Motion to Dismiss for Lack of Prosecution (D.E. # 29). This Court referred Defendant's Motion to Magistrate Judge Claxton (D.E. # 30) on the same day for Report and Recommendation. On February 4, 2010, the Magistrate Judge recommended that Defendant's Motion to Dismiss Plaintiff's Complaint be granted and Defendant's Motion to Dismiss for Lack of Prosecution be denied as moot.

On February 17, 2010, this Court held a status conference in this matter. The Plaintiff failed to appear at the conference. Based on Plaintiff's failure to appear and failure to respond to the Court's previous orders, the Court announced at the conference that it would adopt the Magistrate Judge's Report and Recommendation and dismiss Plaintiff's case with prejudice.

After the hearing, it came to the Court's attention that the Plaintiff may not have received notice of the setting of the status conference or a copy of the Magistrate Judge's Report and Recommendation. Both of these documents were returned by the United States Postal Service to the Court as undeliverable mail (D.E. # 33; 35). As such, the Court directed the Clerk of Court to re-send the Magistrate Judge's Report and Recommendation to Plaintiff. Additionally, the Court gave the Plaintiff fourteen (14) additional days to file objections to the Magistrate Judge's report (D.E. #36). There is no indication on the record that the Plaintiff did not receive the second copy of the Magistrate Judge's Report and Recommendation.

In its Order, the Court noted that "if Plaintiff fails to respond, the Court will dismiss Plaintiff's case with prejudice for lack of prosecution." The deadline for Plaintiff's response was March 8, 2010. To date, the Plaintiff has not responded to the Court's Order. As such, Plaintiff's case is dismissed with prejudice for lack of prosecution.

**IT IS SO ORDERED.**

**s/ S. Thomas Anderson**  
S. THOMAS ANDERSON  
UNITED STATES DISTRICT JUDGE

Date: March 19<sup>th</sup>, 2010.